

PART 3
REMARKS

Claims 1 - 19 are now pending in this application. Independent claims 1 and 4 are amended to overcome the Examiner's rejection of the pending claims.

The applicant's attorney acknowledges a telephonic interview with Examiner Joan M. Olszewski on June 12, 2003. As set forth in the Examiner's Interview Summary, the June 6, 2003 Office Action was discussed, with the Examiner Olszewski. More specifically, the applicant's attorney desired to better understand the Examiner's equating of "sound of bait" and "underwater disturbances produced by fish swimming" to the "sound of moving water" as set forth in claim 1. The Examiner reaffirmed the assertions made in the Office Action, and indicated that Examiner Curt Rowan, who was responsible for reviewing the Office Action, would have to be consulted for any further discussion of the grounds for the rejection. A telephone message was left for Examiner Olszewski on September 9th, asking for a further telephonic interview with her and Examiner Rowan. Examiner Olszewski left a message for the applicant's attorney of September 10th, indicating that Examiner Rowan declined the request for a telephonic interview.

Claim Rejections - 35 U.S.C. § 103

The Examiner has rejected claims 1 - 6, and 10 - 19 under 35 U.S.C. 103(a) as being unpatentable over cited U.S. Patent No. 5,259,809 - Rainey, Jr. in view of U.S. Patent No. 5,177,891 - Holt. The Applicant again, respectfully traverses this ground of rejection.

In the **Response to Arguments**, the Examiner states:

Applicant also argues that neither of the cited patents would be able to directly attract a marine crustacean.

However, this type of argument is more specific than the current claim language.

Independent claims 1 and 4 are amended to specifically recite that marine crustaceans are directly attracted by said recorded sound to the desired location. The use of a sound to directly attract a marine crustacean as set forth in the present invention is nowhere taught or even suggested in either the cited Rainey Jr. patent which suggests the use of un-natural light, or in the cited Holt patent which suggests the recording of a sound, to attract a first organism which is a favored food of a second organism which it is desirable to attract. The applicant's invention as claimed, does not use a stimulus to attract a first organism, which is a favored food of a second organism which it is desirable to attract, but rather uses a stimulus to directly attract the desired organism, a crustacean. Clearly, claims 1 and 4 as amended distinguish over the Examiner's suggested combination of the Rainey Jr. and Holt patents.

With reference to the rejection of claims 1,4,10 and 14, the Examiner in acknowledging that the Rainey Jr. patent does not show the use of a sound emitting attractor, the Examiner makes the following reference to the Holt patent:

However, Holt discloses a sound emitting attractor ... storage means (204) capable of containing a recording of background sounds that are known to attract fish (column 6, lines 1 - 20) such as the sound of underwater disturbances produced by fish swimming or rapidly turning would inherently create and include the sound of moving water or waves, and a speaker (224,225) for transmitting the sound.

The only sound set forth in Holt in column 6, lines 1 - 20, is at line 11 - 13: "... so that the ROM may be readily removed and replaced with another defining the signature of another species of bait". Clearly, the claimed sound of moving water, including

that of waves, current or tidal shift impact on natural marine geological features, is not the "signature of another species of bait". The Examiner's substituting the "sound of underwater disturbances produced by fish swimming or rapidly turning would inherently create and include the sound of moving water or waves" for the "signature of another species of bait" is clearly not suggested by either the Holt or the Rainey Jr. patent. It is respectfully submitted that fish swimming or rapidly turning would not create an underwater disturbance which would inherently create and include the sound of moving water or waves. The slight disturbance of water by a fish swimming therein, does not inherently create the sound of moving water or waves. Further, there is nothing in Holt to suggest the recording of such a disturbance, or that such a disturbance could be recorded. Clearly, claims 1 and 4 as amended, and claims 10 and 14 dependent therefrom, patentably distinguish over the cited Rainey, Jr. and Holt patents as supplemented by what the Examiner considers obvious modifications.

With respect to the Examiner's rejection of claims 2, 5, 12, 16 and 18, there is nothing in the teachings of either Rainey, Jr. or Holt which would suggest the modification of a shrimp trap to catch lobsters. To combine the teaching of Holt's attracting device for game fish with the shrimp trap of Rainey, Jr. and to further modify the trap of Rainey, Jr. to be suitable for trapping lobsters, is clearly beyond anything that would be obvious based on the teachings of the cited patents. The same is true with respect to the Examiner's rejection of claims 3, 6, 13, 17 and 19, which are dependent from claims 2, 5, 12, 16, and 18 respectively.

With respect to the Examiner's rejection of claims 11 and 15, reference is made to the comments above with respect to the rejection of claims 1 and 4. Further, the applicant is unaware of any teaching, other than that of the applicant's invention, to support the Examiner's conclusion that "it would be obvious to use sounds such as 'gurgling or splashing" in order to attract a lobster. Clearly, these claims should be found allowable.

It is respectfully submitted that the Examiner's rejection of claims 7 and 9 under 35 U.S.C. 103(a) as being unpatentable over Rainey, Jr. as modified by Holt as applied to claims 1 - 6 above, and further in view of Rodgers (U.S. Patent 5,697,182), is overcome for all of the reasons set forth above with respect to claim 1. Similarly, it is respectfully submitted that the Examiner's rejection of claims 7 and 8 under 35 U.S.C. 103(a) as being unpatentable over Rainey, Jr. as modified by Holt as applied to claims 1 - 6 above, and further in view of DuMont (U.S. Patent 5,331,760) is overcome for all the reasons set forth above with respect to claim 1.

In rejecting claims 1 - 6 and 10 - 19, the Examiner has cited two patents, Rainey, which sets forth the use of un-natural light to attract plankton or similar shrimp food organisms which in turn attract shrimp, and Holt which sets forth the use of a recording of the sound of the "signature of another species of bait, to attract a first organism (bait) which is a favored food of a second organism which it is desirable to attract. Clearly, neither Rainey nor Holt is concerned with an apparatus to directly attract a crustacean, such as a lobster, to a trap. Such being the case, neither of the cited patents individually or in combination could suggest the unexpected results of the applicant's invention, in directly attracting crustacean. Further, the use of a particular attractant, sensed by one of the five senses, sound, sight, touch, taste or smell, to attract a desired living organism, such as sound in the case of a goose or duck call, does not make obvious all uses of a particular sound to attract a particular desired living organism. This is especially true when the attractant is directed to a sense which was not previously used to attract a desired living organism, i.e. sound for crustaceans, rather than sight and or scent. In the applicant's long experience as a lobster trapper, the normal bait used in lobster traps has been dead herring. Clearly, dead herring do not make the sound of moving water. Thus, the Examiner's statement with reference to the Holt patent "... such as the sound of underwater disturbances produced by fish swimming or rapidly turning would inherently create and include the sound of moving water or waves .." would not suggest the use of the sound of

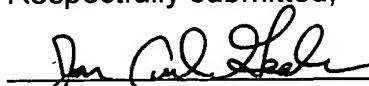
moving water in a lobster trap, wherein dead herring would inherently not create the sound of moving water.

In addition to the Remarks set forth above, the applicant reasserts the Remarks set forth in the Amendment filed February 19, 2003, and requests that they be reconsidered in light of the amendments made to claims 1 and 4, by this Amendment and Response.

Accordingly, the Applicant respectfully submits that the cited patents neither teach nor disclose the subject matter of the present invention, and that one skilled in the art or science would not be motivated by the cited patents, taken either alone, or in combination, to arrive at the subject matter of the present invention as now defined by claims 1 - 19.

It is respectfully submitted that the subject application is in condition for allowance, and any early allowance of this application is respectfully requested. Should the Examiner not find all of the claims allowable, the below signed attorney would very much appreciate a telephone call from the Examiner to discuss possible grounds for finding the claims allowable.

Respectfully submitted,



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